IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

WP(C).No. 25400 of 2006(W)

PETITIONER:

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1. P.A.BASHEER, H.R.WORKER, P.H.DIVISION,
   KERALA WATER AUTHORITY, ERNAKULAM.

2. V.D.MATHEW, WORKMAN (H.R.WORKER),
   P.H.DIVISION, KERLA WATER AUTHORITY,
   ERNAKULAM.

3. P.D.JOSEPH, H.R.WORKE, P.H.DIVISION,
   KERALA WATER AUTHORITY, KOCHI.

BY ADV. SRI.P.SANTHOSH KUMAR (PANAMPALLI NAGAR)
SRI.LUIZ GODWIN D'COUTH

RESPONDENTS:

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1. THE PRINCIPAL SECRETARY TO GOVERNMENT,
   WATER RESOURCES (W.R.S.) DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. THE MANAGING DIRECTOR,
   KERALA WATER AUTHORITY,
   'JALA BHAVAN',
   THIRUVANANTHAPURAM.

3. THE EXECUTIVE ENGINEER,
   P.H.DIVISION,
   KERALA WATER AUTHORITY, KOCHI-16.

4. THE ASSISTANT EXECUTIVE ENGINEER,
   KERALA WATER AUTHORITY,
   SEWERAGE SUB DIVISION, KOCHI-16.

5. THE ASSISTANT ENGINEER,
   DRAINAGE SECTION,
   KERALA WATER AUTHORITY,
   KOCHI-16.

R2 TO 5 BY ADV. SRI.J.KRISHNA KUMAR, SC, KWA
R1 BY GOVT. PLEADER SHRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/01/2007, THE COURT ON THE SAME DAY DELIVERED THE

FOLLOWING:

K.K.DENESAN, J.

WP(C)No. 25400 OF 2006

Dated this the 19th January, 2007.

JUDGMENT

The petitioners are Hand Receipt Workers . It is stated that the petitioners 1 to 3 commenced service in the year 1983, 1982 and 1984 and are therefore entitled to be regularised in service following the directions issued by the Hon'ble Supreme Court in **Jacob v. Kerala Water Authority** (1990(2) KLT 673). The third respondent wrote letter to the Superintending Engineer to regularise the service of the petitioners. The Chief Engineer sent Ext.P7 letter requesting the second respondent to absorb the petitioners into regular service. Since no orders were passed, the petitioners approached the Government. This has led to the issuance of Ext.P8 order dated 23.5.2006 wherein Government have stated as follows:-

"I am to invite your attention to the reference cited and to inform you that as per the existing rules, your request for absorption into NMR category cannot be cosnidered."

2. The prime contention raised by the counsel for the petitioner is that Ext.P8 order is ex facie illegal because the first respondent Government has failed to pass a speaking order which shows non-application of mind.

3.Though notice has been served on the respondents, none has cared to file counter affidavit.

4. On a perusal of the records, particularly Ext.P8 order, it is evident that the first respondent has not examined the request made by the petitioners with reference to the judgment of the Supreme Court in Jacob's case and for that reason alone Ext.P8 is liable to be set aside. When the petitioners have raised a claim based on the judgment of the Supreme Court, the first respondent has got a duty to advert to that contention and then decide the issue based on the directions in that judgment. Ext.P8 says that the claim of the petitioners is not sustainable as per the existing rules. It is not understood which rule is in the mind of the first respondent. That aspect also should be made clear in case the first respondent feels that the claim of the petitioners is liable to be rejected. Therefore, I am of the view that the issue requires a fresh consideration and disposal of the matter by a speaking order. Ext.P8 is therefore set aside. The first respondent is directed to take into consideration all relevant aspects including the directions issued by the Hon'ble Supreme Court in Jacob's case and to pass a speaking order as early as possible, in any event, within two months from the date of receipt of a copy of the

judgment. The petitioner shall be afforded an opportunity of being heard before fresh orders are passed. The petitioners shall produce before the first respondent a copy of the judgment for compliance. Writ petition is disposed of accordingly.

K.K.DENESAN
Judge

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